

**INDUSTRIAL PRETREATMENT PROGRAM
ENFORCEMENT RESPONSE PLAN
Millers Falls WWTP
Erving, Massachusetts**

A. INTRODUCTION

This Enforcement Response Plan (ERP) has been prepared to meet the requirements of the Federal Pretreatment Program Regulation, set forth at 40 CFR 403.8(f)(5), which require municipalities to develop and implement a plan which details procedures for Publicly Owned Treatment Works (POTW) to identify, document and respond to pretreatment violations.

The POTW must investigate violations of the Sewer Use Regulations or permits or orders issued to Industrial Users under those Regulations, and respond to those violations with appropriate corrective or enforcement actions.

In the event of a discharge which reasonably appears to present an imminent endangerment to the health and welfare of persons, the Director will take the following steps:

1. Immediately notify the discharger, either in writing or orally, that its discharge appears to present an imminent endangerment to the health and welfare of persons.
2. Notify the discharger that she/he is required to immediately stop or eliminate the discharge.
3. Require the discharger to submit written documentation of the elimination of the discharge of the Director within forty-eight (48) hours of the Director's notice.
4. If the discharger fails to halt such discharges, the Director shall take such action as she/he deems necessary to prevent or minimize danger to the health and welfare of persons, including, but not limited to, severance of the sewer connection, blockage of the public sewer to halt the discharge, entry onto private property to halt the discharge, suspension or revocation of the IU's permit, or institution of legal action, including temporary injunctive relief.

In the event of other violations of the Sewer Use Regulations or permits or orders issued under those Regulations, the Director or the Board of Selectmen (either, the "Control Authority") will take one or more of the enforcement responses set forth in the attached Enforcement Response Guide. All violations will be identified and documented within five days of the Director's receipt of compliance information demonstrating or indicating the occurrence of the violation. In most instances, the Director's initial enforcement response will be to telephone the discharger or issue a Notice of Violation (NOV) informing the discharger of the existence of the violation. Such initial notice will be provided within fifteen days of detection of the violation. The Notice of Violation may contain a Compliance Order (CO) directing the discharger to take specified actions to comply with the Regulations or permit conditions within a time schedule set forth by the Director. The NOV may also provide for the assessment of penalties, and may suspend the discharger's permit or wastewater collection service until the specified violations have been abated or corrected.

The NOV may also contain an Order to Show Cause directing the discharger to appear before the Board of Selectmen to show cause why the proposed enforcement action should not be taken. The Show Cause Hearing will be held not later than thirty days after the issuance of the Order to Show Cause. Following the Show Cause Hearing, the Board of Selectmen may issue an order to the discharger requiring corrective action, or suspending or revoking wastewater disposal service or any permit until compliance is achieved.

As set forth in the Enforcement Response Guide, the timeframe for enforcement responses subsequent to the initial notice to the discharger will vary, depending on whether the violation involves significant noncompliance or a continuing or recurring violation. For all continuing violations, the response will include a compliance schedule.

Finally, any discharger who violates the provisions of the Regulations, a permit, or an order shall be subject to assessment of civil or criminal penalties, or the institution of legal action to obtain injunctive or monetary relief.

The enforcement of a local pretreatment program centers on the establishment in law of discharge control regulations and the ability of the community to implement and enforce those regulations. An integral part of program development is the determination that the community has the legal authority to control the use of its POTW such that a viable pretreatment program can be established. This legal authority does exist for the Town of Erving. This was confirmed through research by Town Counsel and is based on the following authority:

1. Massachusetts General Law Chapter 83, Section 10
2. Massachusetts General Law. Chapter 40, Section 1
3. Town of Erving Sewer Use Regulations

B. ELEMENTS OF THE ENFORCEMENT RESPONSE PLAN

1. Methods of POTW Investigation of Noncompliance

The Millers Falls POTW receives information identifying when an industry is in noncompliance by collecting self-monitoring reports by the industrial user, by field inspections and direct sampling by the POTW itself, by direct notices from the industrial user when a violation has occurred and by other information which may come to its attention periodically. Methods of investigation of violations by the POTW varies depending on the information available to it initially. An industrial user's response to a Notice of Violation usually results in additional information concerning the investigation.

2. Types of Enforcement Actions the POTW Will Take in Response to Violations and the Time Periods within which to Initiate and Followup These Actions

The enforcement response selected must be appropriate to the violation. The Enforcement Response Guide lists a number of anticipated violations of varying degrees of severity and lists a range of corresponding enforcement actions. The range of enforcement responses used include:

- Notice of Violation
- Administrative Order
- Civil Litigation
- Criminal Prosecution
- Termination of Service
- Supplemental Enforcement Response (i.e., Publication of significantly violating industries or increased monitoring and reporting)

The selected enforcement response should be appropriate to the violation. The criteria to be considered by the POTW when determining a proper response are discussed in the following section.

The time frames for enforcement responses are set forth in Section VII of the Enforcement Response Guide.

3. Identification of the POTW Official Responsible for Each Type of Response

Different enforcement actions are delegated to certain POTW personnel. The responsible officials of the POTW listed by title in Column 4 of the Enforcement Response Guide are: the Pretreatment Coordinator, the Director of Public Works, and the Inspector.

4. The POTW's Responsibility to Enforce All Applicable Pretreatment Standards and Requirements

The Millers Falls POTW believes that this Enforcement Response Plan adequately reflects the POTW's primary responsibility to enforce the requirements of its Industrial Pretreatment Program through its description of actions which the POTW will take in response to a variety of violations.

5. Procedures to Screen Data

All monitoring data will be screened as soon after its receipt as possible (no later than 5 working days after receiving the information). All analytical data shall be compared to categorical and local limits and to any other prohibited discharge standards which may apply. When a violation is detected, the POTW will highlight and document it in the industrial user's file. All violations, including those where the decision to take no action has been made, shall be identified and recorded.

C. CRITERIA TO CONSIDER WHEN DETERMINING A PROPER RESPONSE

The enforcement response selected should be appropriate to the violation. When determining a proper response, the POTW will consider the following criteria:

- Magnitude of the violation

- Duration of the violation
- Effect of the violation on the receiving stream
- Effect of the violation on the POTW
- Compliance history of the industrial user
- Good faith of the industrial user

1. Magnitude of the Violation

Any significant noncompliance should be responded to with an enforcement measure that requires the industrial user to return to compliance by a specific deadline. A user is in significant noncompliance if its violation meets one or more of the following criteria:

- Chronic violations of discharge limits – 66% or more of the measurements taken for the same pollutant parameter in a 6-month period exceed a numeric Pretreatment Standard or Requirement (as hereinafter defined), including instantaneous limits. “Pretreatment Standard” means any regulation containing pollutant discharge limits promulgated by the EPA in accordance with sections 307(b) and (c) of the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.*, which applies to industrial users, including prohibitive discharge limits established pursuant to 40 C.F.R. § 403.5.
- Technical Review Criteria (TRC) violations of discharge limits - 33% or more of all measurements for each pollutant parameter taken in a 6-month period equal or exceed the product of the numeric Pretreatment Standard or Requirement, including instantaneous limits, multiplied by the TRC (TRC = 1.4 for BOD, TSS, fats, oils and grease, and 1.2 for all other pollutants except pH).
- Any other violations of a Pretreatment Standard or Requirement (daily maximum, long-term average, instantaneous limit, or narrative standard) that the Control Authority determines has caused alone, or in combination with other discharges, interference or pass through, or endangers the health of POTW workers or the general public.
- Any discharge that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the POTW's exercise of its emergency authority to halt or prevent such discharge.
- Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order.
- Failure to provide, within 45 days after the due date, required reports including baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and compliance schedule reports.
- Failure to accurately report noncompliance.

- Any other violation(s) which the Control Authority determines will adversely affect the operation or implementation of the local pretreatment program.

2. Duration of the Violation

Violations which continue over prolonged periods of time will subject the industrial user to escalated enforcement actions, even if the violation is not considered significant. The Control Authority's response to these recurring situations should prevent extended periods of noncompliance. Chronic violations will be responded to with administrative orders and if the industrial user fails to comply with the order, judicial action should be initiated. If the prolonged violation results in serious harm to the POTW or the environment, the Control Authority should consider terminating service or obtaining a court order to halt further violations as well as to recover the costs of repairing the damage.

3. Effect of the Violation on the Receiving Water

Any violation resulting in environmental harm should receive a severe response. Circumstances leading to environmental harm include industrial discharges of pollutants into the sewerage system which:

- Pass through the POTW
- Cause a violation of the POTW's NPDES permit
- Have a toxic effect on the receiving waters

Responses to these situations should include an administrative order and a fine. Any NPDES fines paid by the Control Authority shall be recovered from the noncompliant user. Terminating service of a user will be considered if the industrial user's discharge causes repeated harmful effects.

4. Effect of the Violation on the POTW

Violations which result in negative effects on the POTW, such as significant increases in treatment costs, interferences, or harm to POTW personnel, equipment, processes, operations, or cause increased disposal costs resulting from sludge contamination, should be met with a fine and an order to correct the violation in addition to recovery of additional costs and expenses to repair the POTW.

5. Compliance History of the Industrial User

A history of recurring violations may indicate that the user's pretreatment system is inadequate or that the user is not properly operating and maintaining its treatment system. Future significant violation's are likely from recurring violators. Compliance history is an important consideration for deciding appropriate measures to apply to certain violations. Users demonstrating repeated noncompliance should be dealt

with strongly to ensure that consistent compliance is restored.

6. Good Faith of the Industrial User

"Good faith" of a user may defined as the user's honest intention to remedy its noncompliance and its actions which support this intention. Good faith is typically demonstrated by cooperation and completion of corrective measures in a timely manner. Although good faith does not eliminate the need for an enforcement action, a user's demonstrated willingness to comply should incline the Control Authority to select less stringent enforcement responses.

D. USING THE ENFORCEMENT RESPONSE GUIDE

The Enforcement Response Guide which follows identifies various types of violations, indicates initial and followup enforcement responses and identifies Control Authority personnel and timeframes assigned to each response.

The guide should be used as follows:

1. Locate the type of noncompliance in the first column and identify the most accurate description of the violation in the second column.
2. Determine the appropriateness of the recommended response(s) in column three. Take into consideration the six (6) criteria discussed in Section C.
3. Apply the enforcement response to the industrial user, and specify corrective action or other responses required of the industrial user, if any. Column four indicates personnel to take each response and Section VII of the Guide describes the time frame in which each response should be taken.
4. Follow up with escalated enforcement action if the industrial user does not respond or continues their violation. All supporting documentation regarding the violation and its enforcement actions should be maintained and filed.

LOCAL INDUSTRIAL PRETREATMENT ENFORCEMENT RESPONSE PLAN

MILLERS FALLS WWTP - ERVING, MASSACHUSETTS

I.	DESCRIPTION OF TERMS USED IN ENFORCEMENT GUIDE
1.	Administrative Order - An Administrative Order (AO) directs the Industrial User to take certain actions and will usually contain a compliance schedule.
2.	Civil Litigation - A lawsuit filed on behalf of the POTW in a court of law. Civil litigation may include demands for injunctive relief, fines or damages.
3.	Compliance Order - A compliance order is an administrative order that directs the user to achieve or restore compliance by a date specified in the order.
4.	Criminal Prosecution - Action against a violator in a court of law which involves criminal penalties.
5.	D - Director of Public Works.
6.	Fine - A civil monetary penalty. Fines must be sought through civil litigation. A fine of up to \$5,000 per violation per day may be sought.
7.	I - Inspector.
8.	Isolated - First or second offense.
9.	IU - Industrial User. A source of indirect discharge.
10.	Meeting - Informal compliance meeting with the IU to resolve occurrences of noncompliance.
11.	Notice of Violation - A written Notice of Violation which notifies the Industrial User of a violation and requires the Industrial User to submit a written response within a stated period of time explaining the cause of the violation and outlining corrective actions taken.
12.	PC - Pretreatment Coordinator.
13.	POTW - Publicly Owned Treatment Works.
14.	Recurring - Repeated offense, third time or greater.
15.	Show Cause Order - An order to show cause directs the user to appear before the Control Authority, explain its non-compliance, and show cause why more severe enforcement actions against the user should not be taken.
16.	Significant - A significant discharge limit violation is one which results in chronic violations (those in which 66% of the samples exceed the limit); results in technical review criteria (TRC) violations; causes pass through or interferences; causes imminent danger to human health or the environment; or the POTW considers to be significant.
17.	Suspend Service - Action to prevent the Industrial User from discharging to the POTW for a period of time.
18.	Terminate Service - Action to prevent the Industrial User from discharging to the POTW on permanent basis.

II. UNAUTHORIZED DISCHARGES (No Permit)			
1. Unpermitted discharge	IU unaware of requirement; no harm to POTW or environment	Phone call; Notice of violation with application form	PC/D
	IU unaware of requirement; harm to POTW	Administrative order with fine Civil action	PC/D D
	Failure to apply continues after notice by the POTW	Civil action Criminal investigation Terminate service	D D D
2. Nonpermitted discharge (failure to renew)	IU has not submitted application within 10 days of due date	Phone call; Notice of violation	PC/D
	Reported spill with no known adverse effects	Phone call; Notice of violation	PC/D
III. DISCHARGE LIMIT VIOLATION			
1. Exceedance of local or Federal Standard (per limit)	Isolated, not significant	Phone call; Notice of violation	I/PC/D
	Isolated, significant (no harm)	Compliance order to develop spill prevention plan and fine	PC/D
	Isolated, harm to POTW or environment	Show cause order Civil action	PC/D PC/D
	Recurring, no harm to POTW or environment	Administrative order with fine	PC/D
	Recurring; significant (harm)	Compliance order with fine Show cause order Civil action Terminate service	PC/D PC/D D D

IV. MONITORING AND REPORTING VIOLATIONS			
1. Reporting violation	Report is improperly signed or certified	Phone call; Notice of violation	PC/D
	Report is improperly signed or certified after notice by POTW	Compliance order Show cause order	PC/D PC/D
	Lateness, isolated, not significant (e.g., 5 days late)	Phone call; Notice of violation	I/PC/D
	Lateness, significant (e.g., report 30 days or more late)	Compliance order to submit with fine per additional day Compliance order with fine	PC/D PC/D
	Reports are always late or no reports at all	Show cause order Civil action	PC/D PC/D
	Failure to report spill or changed discharge (no harm)	Notice of violation	PC/D
	Failure to report spill or changed discharge (results in harm)	Compliance order with fine Civil action	PC/D D
	Repeated failure to report spills	Show cause order Terminate service	D D
2. Failure to monitor correctly	Falsification	Criminal investigation Terminate service	PC/D PC/D
	Failure to monitor all pollutants as required by permit	Notice of violation Administrative order	PC/D D
	Recurring failure to monitor	Compliance order with fine Civil action	D D

3.	Improper Sampling	Evidence of intent	Criminal investigation Terminate service	D D
		Complete failure to sample, monitor or report	Compliance order Civil action and/or criminal prosecution seeking penalties Terminate service	PC/D D D
4.	Failure to install monitoring equipment	Delay of less than 30 days	Notice of violation	PC/D
		Delay or 30 days or more	Compliance order with fine for each additional day	PC/D
		Recurring, violation of Administrative/Compliance Order	Civil action Criminal investigation Terminate service	D D D
5.	Compliance Schedules (in permit)	Missed milestone by less than 30 days, or will not affect final milestones	Notice of violation or compliance order with fine	PC/D
		Missed milestone by more than 30 days, or will affect final milestone (good cause for delay)	Compliance order	PC/D
		Missed milestone by more than 30 days, or will affect final milestone (no good cause for delay)	Show cause order Civil action Terminate service	PC/D D D
		Recurring violation or violation of schedule in administrative/compliance order	Civil action Criminal investigation Terminate service	D D D
6.	Failure to notice of discharge limit violation or slug load discharge	Isolated, no known effects	Notice of violation	D
		Recurring, no known effects	Show cause hearing	D
		Known POTW or environmental damage	Civil litigation seeking fine for each day in violation Criminal prosecution Terminate service	D D D

V. OTHER PERMIT VIOLATIONS				
1.	Wastestreams are diluted in lieu of treatment	Initial violation	Compliance order with fine	PC/D
		Recurring	Show cause order Terminate service	PC/D D
2.	Failure to mitigate noncompliance or halt production	Does not result in harm	Notice of violation	PC/D
		Does result in harm	Compliance order with fine Civil action	PC/D D
3.	Failure to properly operate and maintain pretreatment facility	Does not result in harm	Notice of violation	PC/D
		Does result in harm	Compliance order with fine Civil action	PC/D D
VI. VIOLATIONS DETECTED DURING SITE VISITS				
1.	Entry Denial	Entry denied or consent withdrawn; copies of records denied	Obtain warrant and return to IU	I/PC/D
2.	Illegal Discharge	No harm to POTW or environment	Compliance order with fine	PC/D
		Discharges causes harm or evidence of intent/negligence	Civil action Criminal investigation	D D
		Recurring, violation of administrative/compliance order	Terminate service	D
3.	Improper Sampling	Unintentional sampling at incorrect location	Notice of violation	I/PC/D
		Unintentional using incorrect sample type	Notice of violation	I/PC/D
		Unintentional using incorrect sample collection techniques	Notice of violation	I/PC/D
4.	Inadequate recordkeeping	Inspector finds files incomplete to missing (no evidence of intent)	Notice of violation	I/PC/D
		Recurring	Compliance order with fine	PC/D

5.	Failure to report additional monitoring	Inspection finds additional files Recurring	Notice of violation Compliance order with fine	I/PC/D PC/D
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VII. TIME FRAMES FOR RESPONSES

- A. All violations will be identified and documented within five working days or receiving compliance information.
- B. Initial enforcement responses involving contact with the industrial user and requesting information on corrective or preventative action(s) will occur within 15 days of detection of any violation.
- C. Follow up actions for continuing or recurring violations will be taken within 60 days of the initial enforcement response. For all continuing violations, the response will include a compliance schedule.
- D. Violations which threaten health, property or environmental quality are considered emergencies and will receive immediate responses such as halting the discharge or terminating service.
- E. All violations meeting the criteria for significant noncompliance will be addressed with an enforceable order within 30 days of the identification of significant noncompliance.

APPROVED this 25th day of November 1992

/s/ Dennis E. Rindone, Chairman
Town of Erving Board of Selectmen

AMENDED, AFFIRMED AND RATIFIED this 29th day of July 2010

Andrew N. Goodwin, Chairman
Town of Erving Board of Selectmen

ATTEST: _____ (Seal) Town Clerk

Filed the _____ day of _____, 2010

Published the _____ of _____, 2010